

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT )  
NO. 19170-s430 BY THEO J. AND )  
UNA KAY DeCOCK )

FINAL ORDER

\* \* \* \* \*

The Objectors Visser, through their Attorney C. Ed Laws, have submitted objections to the Proposal for Decision entered in this matter. (See attached.) In accordance with Objection No. 1, Findings of Fact No. 7 is hereby amended in the following particulars.

7. The Objectors Visser use the waters of Greenwood Creek for stock-watering purposes, and benefit from the flows therein by subirrigation.

All other objections to the Proposal for Decision are rejected for the following reasons. The seepage from Applicant's proposed reservoir is unlikely to aggravate any saline seep problems due to its on-stream location. Saline deposits are not normally associated with alluvial type geologic structures. At any rate, Applicant's potential contributions to this problem are on this record to be regarded as minimal, and

by the circumstances it is not likely that such seepage waters will infiltrate the surface water flow upstream from Objectors points of diversion so as to cause any significant water quality problems.

While it fairly appears in the existing Findings of Fact and Conclusions of Law that the Vissers are located downstream from the proposed location of the reservoir, it is not necessary to further detail and make findings relating to dam safety. Such concerns are not part of the Applicant's burden of proof. See generally In re Hoyt, Dept. Order 11/19/81, MCA 76-5-101 et seq. (1979), MCA 85-15-101 et seq. (1979). Such concerns do not threaten one's right to divert and use water, and therefore do not infringe on any "rights of a prior appropriator." See MCA 85-2-311(2) (1979). It is enough that Applicants' proposed means of diversion is a reasonable one, and will not result in the waste of the water resource. See State ex rel Crowley v. District Court, 108 Mont. 89, 88 P.2d 23 (1939).

It is not necessary to further deal with the problems associated with the land ownership at Applicant's proposed place of diversion for the reasons elucidated in the Proposal for Decision. However, it might be noted in addition that requiring an applicant to show proof of necessary easements and land ownership for a water use permit would quickly detail a bureaucratic "Catch 22" for prospective appropriators. In an eminent domain proceeding, absent a water use permit, it would



be difficult at least to show that the use to which the property will be applied is a "use authorized by law" and that the taking is necessary for such use. See HCA 70-30-111 (1979). In contradistinction, without the benefits of eminent domain, a prospective appropriator would be hard put to acquire the necessary easements and rights-of-way for his intended project, thus frustrating the dictate of Mont. Const. Art. IX, Sec. 3(2).

Objection No. 5 by Objector Visser is not at all in point. The Proposal for Decision entered in this matter already by its terms requires the Permittees to install measuring devices and to continually account for the volume of waters flowing in Greenwood Creek. It is patently unfeasible to take a single measurement of a stream with variable flows and to use that as the barometer of the appropriation for all purposes. Once Applicants' proposed dam captures the full measure of the appropriative limit provided for herein, inflows must be substantially equivalent to outflows. This can most easily be accounted for by measuring devices at the intake portion of the reservoir and at the discharge point.

On its own motion, the Department further incorporates the limitations for diversion for storage contained in Conclusion of Law No. 4 and Finding of Fact No. 19 into the decretal portion of the Order.

WHEREFORE, based on these Findings of Fact and Conclusions of Law, the following Final Order is hereby issued.

Subject to the terms, restrictions, and limitations herein, Application for Beneficial Water Use Permit No. 19170-s430 is hereby granted to Theo J. and Una Kay DeCock to appropriate 83 acre-feet of water per year. The point of diversion shall be an earth-fill dam located in the E1/2 SE1/4 SE1/4 of Section 15, Township 1 North, Range 20 East, all in Stillwater County. The source of supply shall be an unnamed tributary of Greenwood Creek. In no event shall Permittees divert the waters of the source of supply for storage thereof prior to April 1 of any given year nor subsequent to July 1 of any given year. The Permittees may divert from said storage and use up to 80 acre-feet of water for new sprinkler irrigation of 60 acres more or less in the SE1/4 of Section 15, in the E1/2 of Section 22, Township 1 North, Range 20 East, all in Stillwater County, from May 1 to October 31, inclusive, of any year. The Permittees may further divert, store, and use up to three acre-feet of the waters so impounded per year for stock-watering purposes in the E1/2 SE1/4 SE1/4 of Section 15, Township 1 North, Range 20 East, all in Stillwater County, from September 1 to May 1, inclusive, of each year. The priority date for this permit shall be June 20, 1978, at 11:49 a.m.

This permit is subject to the following conditions, restrictions, and limitations.

A. Any rights evidenced herein are subject to all prior and existing rights, and any final determination of such rights as provided by Montana law. Nothing herein shall be construed to authorize the Permittees to interfere with the natural flow of the waters of the source of supply to the detriment of any senior appropriator.

B. The Permittees shall in no event cause to be diverted from the source of supply more than 83 acre-feet of water per year. The amount of water remaining in storage on April 1 of any given year shall be part and parcel of the next ensuing year's appropriative limit.

C. The Permittees shall in no event cause waters to be diverted for storage in excess of that quantity reasonably required for the irrigation of the above-described land.

D. Permittees shall diligently adhere to the terms and conditions of this Order.

E. Nothing herein shall be construed to affect or reduce the Permittees' liability for damages which may be caused by the exercise of this permit. Nor does the Department in issuing this permit acknowledge any liability for damages caused by the exercise of this permit, even if such damage is the necessary and unavoidable consequence of the same.



F. The Permittee shall install and maintain at their own expense any and all measuring devices required to implement the conditions set forth herein.

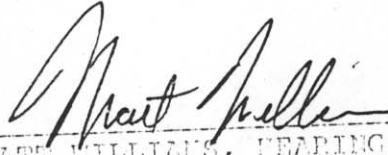
G. The proposed dam shall meet or exceed all the Soil Conservation Service minimum specifications for earth-fill dams, and shall be equipped with a pass-through drainage tube.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 30<sup>th</sup> day of December, 1981.

GARY FRITZ, ADMINISTRATOR  
Department of Natural  
Resources and Conservation  
32 S. Ewing, Helena, MT  
(406) 449 - 2872

  
KATE WILLIAMS, HEARING EXAMINER  
Department of Natural Resources  
and Conservation  
32 S. Ewing, Helena, MT 59620  
(406) 449 - 3962

CASE # 19170

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION	)	
FOR BENEFICIAL WATER USE	)	PROPOSAL FOR DECISION
PERMIT NO. 19170-s43Q BY	)	
THEO J. AND UNA KAY DeCOCK	)	

\* \* \* \* \*

Pursuant to the Montana Water Use Act and the the contested case provisions of the Montana Administrative Procedures Act, a hearing in the above entitled matter was held in Billings, Montana, 1981. The Applicant appeared personally. Objectors appearing were James and Barbara Visser, Clifton Herde, and Elmer Boehme. The Department of Natural Resources and Conservation was represented at the hearing by Keith Kerbel, Area Office Supervisor of the Department's Billings field office.

EXHIBITS

The Applicant offered into the record two exhibits, to-wit:

A-1: A schematic of dam specifications which Applicant claims will be similar to his proposed dam.

A-2: Specifications for the Applicant's proposed dam prepared by the Soil Conservation Service.

Both of Applicant's exhibits were received into the record without objection.

The Objectors Visser offered into the record two exhibits, to-wit:

V-1: A letter purportedly issued by the Stillwater County Commissioners objecting to Applicant's proposed dam.

V-2: Copies of statement of claim made pursuant to the adjudication process that Vissers claim evidence their rights.

Both of these exhibits were received into the record without objection.

The Department of Natural Resources and conservation offered into the record two exhibits on its own behalf, to-wit:

D-1: A memorandum prepared by a department employee referencing his inspection of the proposed appropriation.

D-2: Copies of United States Geological Survey maps upon which has been depicted the Objectors' and Applicants' lands with the source of supply shaded in orange.

The Department's exhibits were received into the record without objection.

The Hearing Examiner, after reviewing the evidence herein, and now being fully advised in the premises, does hereby make the following findings of fact, conclusions of law, and order.

#### FINDINGS OF FACT

1. The Department has jurisdiction over the Applicants' proposed appropriation and over the parties hereto.



2. The Applicant has a bona fide intent to appropriate water and is not attempting to speculate in the water resource.

3. The Applicant intends to impound up to 83 acre-feet of water annually. The source of supply will be an unnamed tributary to Greenwood Creek. Eighty (80) acre-feet of the water so impounded are intended to be used for the irrigation of 60 acres more or less, located in the SE1/4 of Section 15, Township 1 North, Range 20 East, and in the N1/2 of Section 22, Township 1 North, Range 20 East, all in Stillwater County, from May 1 to October 31, inclusive, of each year. Such use of water would be of material benefit to the Applicant as the cultivation of hay and grains is impossible without the use of such waters. Moreover, 80 acre-feet per year for the irrigation of 60 acres is a reasonable estimate of the amount of water required and that is customary for the proposed use.

The Applicant also intends to use 3 acre-feet of the waters impounded in any given year for stock-watering purposes from September 1 to May 1, inclusive, of each year. Applicant owns 300 head more or less of sheep. The use of the above quantity of water for stock-watering purposes would be of material benefit as it would allow and permit a more effective use of pasture. Moreover, 3 acre-feet per year for such stock-watering purposes is a reasonable estimate of the quantity of water required for such purposes.

4. Applicant's dam as originally proposed and as noticed in this matter was to be situated on Greenwood Creek. Applicant now intends to locate his dam on an unnamed tributary to Greenwood

Creek above the point of diversion originally contemplated. Such a change in the point of diversion leaves Applicant's presently contemplated dam in a position to capture less waters of the source of supply, and therefore, no prejudice accrues to other users of the water resource by failure of the public notice to reflect the presently contemplated point of diversion.

5. The drainage area of Greenwood Creek is approximately 15 square miles, while the drainage area of the tributary upon which Applicant's dam will be located is approximately 1.5 square miles.

6. The waters of Greenwood Creek have a more or less constant base-flow rate that is generated by groundwater accretions through springs, although there are particular points of the creek that dry up on occasion due to the capture of these surface flows by the alluvial outwash. The waters of Greenwood Creek are in a closed basin, and in the natural course will run down and form part of a downstream naturally occurring surface water impoundment.

6. Greenwood Creek and its tributaries experience higher flows due to snow-melt runoff and rain-induced freshets in the early spring and lasting until approximately July 1.

7. The Objectors Visser use the waters of Greenwood Creek for stock-watering purposes.

8. The Objector Boehme utilizes the waters of Greenwood Creek for stock-watering purposes and benefits from the flow thereof by subirrigation processes.

9. The Objector Herde benefits from the flow of Highwood Creek by subirrigation.

10. There are unappropriated waters available for the Applicant's proposed use. Applicant's proposed dam will capture almost exclusively high-water flows of Greenwood Creek. The evidence shows that there are some spring waters captured by this unnamed tributary, but they do not appear to be substantial or a necessary ingredient to the flow of Greenwood Creek so as to enable the objectors to utilize their water rights. Whenever such high-flow periods occur in Greenwood Creek, the waters are in excess of any objectors' needs and have historically run to waste.

11. Applicant's dam will be an on-stream, earth-filled structure. Materials for this structure will be derived from adjacent soils which include bentonite clay. Said clay is relatively impermeable and will serve to frustrate seepage losses. Said dam will also be developed with a flow-through tube to serve as drainage device, and a trickle tube to maintain water levels. The spill portion of the dam will be riprapped or cemented. Cement collars will be provided for the pass-through and trickle tubes so as to inhibit seepage. The dam will be constructed according to Soil Conservation Service standards.

12. Applicant's proposed means of diversion and construction and operation of his appropriative works are adequate. They are customary for their intended purposes, and will not result in the waste of the water resource.

13. Applicant's proposed diversions and water use will not adversely affect appropriators. Applicant's dam will capture almost exclusively high-flow waters which are not needed or required for downstream uses. At any rate, Applicant's dam will be equipped with a pass-through tube by which waters from the dam can be by passed for downstream use.

14. There are no permits or water reservations apparent from the face of the record.

15. The point of diversion of the waters herein will be located in the E1/2 SE1/4 SE1/4 of Section 15, Township 1 North, Range 20 East, all in Stillwater County.

16. The use of water in accordance with the terms and conditions herein will not aggravate any saline seep problems downstream from Applicant's diversion point.

17. The Application as amended in this matter was duly and regularly filed with the Department of Natural Resources and Conservation on June 20, 1978, at 11:49 a.m.

18. The Applicant's proposed dam will have a capacity of approximately 83 acre-feet.

19. The Applicant intends to use the waters impounded in the aforesaid dam for irrigation purposes from May 1 to October 31, inclusive, of each year, and intends to use the water so impounded for stock-watering purposes from September 1 to May 1, inclusive, of each year. However, Applicant intends to divert and capture waters in a storage structure only approximately April 1 through July 1 of any given year.



20. The impoundment of the waters claimed herein will inundate a right of way owned and claimed by Stillwater County.

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction over the Application in this matter, and over the persons involved herein.

2. MCA 85-2-311 (1981 amend.) directs the Department to issue a new water use permit if the following conditions or criteria exist:

(1) there are unappropriated waters in the source of supply:

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5).

3. The use of water for the irrigation of 60 acres more or less and the use of water for stock-watering purposes would be of material benefit to the Applicant, and is therefore a beneficial use. See 85-2-102(2) (1979). Moreover, the use of 80 acre-feet per irrigation season, and the use of 3 acre-feet per year for stock-watering purposes is a reasonable estimate of the quantity of water required for these purposes. Indeed, Applicant's proposed uantities may be insufficient in many years for these purposes in light of the necessary evaporative and seepage losses that will accrue to the waters impounded by Applicant's dam. An appropriator in this state must take account of such "carriage losses" in making his appropriative claim. The quantity of any appropriation is measured at the point of diversion, in this case applicant's dam or impoundment. Since this dam will have a capacity tracking with the total amount of Applicant's appropriative claim, and since Applicant has demonstrated an intention to fill this structure only during spring high-flow periods, it is inevitable that some such "conveyance" losses will accrue to these waters before they are applied to the irrigation and stock-watering uses. These losses, however, are part of Applicant's appropriative claim. Wheat v. Cameron, 64 Mont. 494 210 P. 761 (1922).

The permit to be issued in this matter authorizes the Applicant to impound and capture in his dam structure only his total claim of 83 acre-feet of water per year. Therefore, once the Applicant has succeeded in capturing or impounding this appropriative limit, inflow to the reservoir must be equal to

outflows until such time as diversions for storage begin for the next succeeding year. Moreover, any waters remaining in storage not used in any given year must be credited to the next ensuing years appropriative limit. Therefore, whatever waters remain in storage on April 1 of any given year, that being the date the Applicant intends to begin diversions for storage in any given year, must be deducted from that year's appropriative limit. That is, if ten acre-feet remain in storage on April 1 of any given year, the Applicant is entitled to divert and capture only 73 acre-feet more for use in that year. Any other rule would allow an appropriator to succeed his expressed intentions in water use, and would provide an appropriator with an unreasonable quantity of water to fulfill his stated purposes. That is equivalent to waste. See generally Woodward v. Perkins, 116 Mont. 46, 147 P.2d 1016 (1944).

4. The Applicant intends to divert and capture the waters in the source of supply from April 1 to July 1, inclusive, of each year. Applicant intends to use the waters so impounded for agricultural purposes from May 1 to October 31, inclusive, of each year, and for stock-watering purposes from September 1 to May 1, inclusive, of each year.

5. The source of supply shall be an unnamed tributary to Greenwood Creek.

6. The priority date of this Application shall be the date of the amended application, to-wit: June 20, 1978, at 11:49 a.m. This is the date and time at which the application was duly and

regularly filed with the Department of Natural Resources. See  
MCA 85-2-401(2) (1979).

7. The point of diversion for the waters claimed herein will be in the E1/2 SE1/4 SE1/4 of Section 15, Township 1 North, Range 20 East, all in Stillwater County. The place of use of the water for stock-watering purposes will be the same. The place of use for the sprinkler irrigation proposed by the Applicant will be 60 acres more or less, located in the SE1/4 of Section 15, and in the NE1/4 of Section 22, Township 1 North, Range 20 East, all in Stillwater County.

8. The Applicant's proposed means of construction, diversion, and operation of his appropriation works are adequate. The Applicant's proposed earth-fill dam with sprinkler system accoutrements are customary for their intended use, and they will not result in the waste of the water resource. See State Ex Rel Crowley v. District Court, 108 Mont. 89, 88 P.2d 23 (1939).

9. There are unappropriated waters in the source of supply throughout the period during which Applicant seeks to divert these waters. The evidence herein shows that the waters Applicant will be impounding will be spring high-flow or rain induced freshets. The source of supply has only a marginal base-flow rate. The high-flow waters are not required for downstream uses.

10. There are no permits or water reservations which this application may conceivably affect.



11. The applicant must prove by substantial credible evidence that the statutory criteria exists as he is applying for less than 10,000 acre-feet a year or more.

12. The rights of prior appropriators will not be adversely affected by the permit to be issued in this matter with the terms and conditions attached thereto. It is evident from the record that Applicant's dam will be impounding in the normal course of events high-flow waters which would otherwise run to waste in this closed basin. The capture and use of these waters would therefore not infringe the rights of downstream users to divert waters for their own uses. However, nothing in this order affects or otherwise modifies the fundamental appropriation feature of "first in time, first in right." See MCA 85-2-401 (1979), MCA 85-2-407(1) (1979). That is, the first to apply water to a beneficial use in this state is entitled to the maintenance of that use as against the claims of all subsequent appropriators. Therefore, nothing herein can be construed as authorizing the Applicant to impound or otherwise interfere with the waters of the source of supply when the naturally occurring flow of that water is required for downstream uses. Applicant's rights, being junior to those of Objectors herein, are necessarily subject to them. Applicant's dam will be equipped with a pass-through tube so as to provide a mechanism for bypassing the source of supply for the benefit of downstream users.

13. Although Applicant's dam will apparently inundate the right-of-way claimed and owned by Stillwater County, that alone

is not an "adverse affect" to a prior appropriator so as to justify a denial of a permit in this matter. Nor does it make the proposed diversion works inadequate for their purposes.

It could not have been the legislative intent disclosed by the permitting statutes to authorize the Department to determine the complicated questions of land ownership and use. Such problems involve questions of law that the courts are peculiarly expert in, and the fact situations which underlie them require no technical expertise which is within the province of this agency.

A water use permit, it must be recognized, merely licenses a prospective appropriator to complete his appropriation. A "permit" therefore implicitly adopts the common law notion of inchoate water right. Nothing in the Montana Water Use Act undermines or disturbs the well-established precept that actual application of the water to beneficial use or at least completion of the diversion works therefore, is a prerequisite for a fully perfected appropriation. See generally, Bailey v. Tintinger, 45 Mont. 154, 122 P. 575, (1912), Clausen v. Armington, 123 Mont. 1, 212 P.2d 440 (1949), General Agriculture v. Moore, 166 Mont. 510, 534 P.2d 859 (1975). Thus, MCA 85-2-315(1) (1979) provides for the issuance of a certificate of water right upon completion of the appropriation by actually applying by the countenanced by the permit to beneficial use.

It is thus apparent that nothing in this order does or could by its nature authorize the Permittee or Applicant herein to interfere or otherwise trespass on the rights of the County of Stillwater with regard to their asserted right-of-way. Should

the Permittee or Applicant herein fail in garnering any necessary permissions for the completion of his diversion works, it is inevitable that his claim for appropriation will fail and that his appropriation will lapse. It is worth noting in this general regard that "sites for reservoirs necessary for collecting and storing water shall be held to be a public use," Mont. Const. Art. IX, Sec. 3(2), and that ordinarily persons desiring lands for reservoir sites may take such properties by way of eminent domain. See generally, 70-30-101 et. seq. (1979). The Hearing Examiner does not, of course, express any opinion as to whether such a condemnation is proper or permissible in the present circumstances, especially since the county right-of-way may be considered a prior public use of the property involved. See MCA 70-309-103(1)(c) (1979).

WHEREFORE, based on these Findings of Fact and Conclusions of Law, the following proposed Order is hereby issued.

Subject to the terms, restrictions and limitations herein, Application for Beneficial Water Use Permit No. 19170-s43Q is hereby granted to Theo J. and Una Kay DeCock to appropriate 83 acre-feet of water per year. The point of diversion shall be an earth-fill dam located in the E1/2 SE1/4 SE1/4 of Section 15, Township 1 North, Range 20 East, all in Stillwater County. The source of supply shall be an unnamed tributary of Greenwood Creek. The Permittees may divert and use up to 80 acre-feet of water for new sprinkler irrigation of 60 acres more or less, in

the SE1/4 of Section 15 and the N1/2 of Section 22, Township 1 North, Range 20 East, all in Stillwater County, from May 1 to October 31, inclusive of any year. The Permittees may further divert, store, and use up to 3 acre-feet of water per year for stock-watering purposes in the E1/2 SE1/4 SE1/4 of Section 15, Township 1 North, Range 20 East, all in Stillwater County, from September 1 to May 1, inclusive, of each year. The priority date for this permit shall be June 20, 1978, at 11:49 a.m.

This permit is subject to the following conditions, restrictions and limitations.

A. Any rights evidenced herein are subject to all prior and existing rights, and any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize the Permittee to interfere with the natural flow of the waters of the source of supply to the detriment of any senior appropriator.

B. The Permittee shall in no event cause to be diverted from the source of supply more than 83 acre-feet of water per year. The amount of water remaining in storage on April 1 of any given year shall be part and parcel of the next ensuing year's appropriative limit.

C. The Permittee shall in no event cause waters to be diverted from storage in excess of that quantity reasonably required for the irrigation of the above-described land.

D. Permittee shall diligently adhere to the terms and conditions of this order.

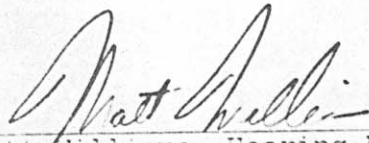
E. Nothing herein shall be construed to affect or reduce the Permittees' liability for damages which may be caused by the exercise of this permit. Nor does the Department in issuing this permit acknowledge any liability for damages caused by the exercise of this permit, even if such damage is the necessary and unavoidable consequences of same. The Permittees shall install at their own expense any measuring devices required to implement the conditions set forth herein.



F. The proposed dam shall meet or exceed all Soil Conservation Service minimum specifications for earth-fill dams, and shall be equipped with a pass-through drainage tube.

G. The Permittee shall install at his cost any and all measuring devices required to implement this order.

DONE this 23<sup>rd</sup> day of November, 1981.



Matt Williams, Hearing Examiner  
Department of Natural Resources

and Conservation 32 S. Ewing,  
Helena, MT 59620

(406) 449 - 3962

NOTICE

This Proposed Order is offered for the review and comment of all parties of record. All comments and exceptions must be filed with and received by the Department of Natural Resources and Conservation on or before December 24, 1981.

# AFFIDAVIT OF SERVICE

STATE OF MONTANA

County of Lewis and Clark

Beverly J. Jones, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That pursuant to the requirements of Section 85-2-309, MCA, on Dec. 10, 1981 he deposited in the United States mail, "certified mail", an Order by the Department on the application by Theo & Una DeCock, Application No. 19170-s43Q for a Permit to appropriate water, addressed to each of the following persons or agencies:

1. Theo J. and Una Kay DeCock, HCR #2, Box 12, Rapelja, MT 59067
2. Clifton Herde, Rapelja, MT 59067
3. Elmer Boehme, Rapelja, MT 59067
4. James & Barbara Visser, Rapelja, MT 59067
5. William A. Blenkner, Blenkner & Laws, P. O. Box 97, Columbus 59019
6. Keith Kerbel, Billings Field Office, (regular department mail)
7. Matt Williams, Hearing Examiner, DNRC, Helena (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

STATE OF MONTANA

County of Lewis & Clark

On this 10 day of Dec., 1981, Beverly J. Jones, known to me to be the Hearing Recorder of the Department and to have this instrument and the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, the day and year in this certificate first above written.

John P. Goldman  
Notary Public for the State of Montana

Residing at Helena, MT

My Commission Expires 1/21/84

**CASE # 19170**